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January 24, 1985

The Honorable Crane Winton
Special Master
1307 Mount Curve Avenue
Minneapolis, MN. 55403

RE: U.S. et al. v. Reilly Tar & Chemical Corporation
Civil File No. 4-80-460

Dear Judge Winton:

On Monday, January 21, 1985, the parties met with you to discuss several issues related to the above-referenced matter. Among the issues discussed was the State's intention to bring a motion, under Fed. R. Civ. P. 15(a), to amend its complaint to assert claims under the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. § 115B (1984). The enclosed documents relate to that motion and include the following:

- (1) Notice of Motion and Motion of State of Minnesota for Leave to File Its Second Amended Complaint;
- (2) Memorandum in Support of Motion of State of Minnesota for Leave to File Its Second Amended Complaint, to which are attached:
 - (a) Exhibit 1: Second Amended Complaint in Intervention of the State of Minnesota; and
 - (b) Exhibit 2: The Minnesota Pollution Control Agency (MPCA) documents providing background information used by the MPCA in deciding whether to invoke the Environmental Response and Liability Act, Minn. Stat. § 115B (1984).

In filing these documents with you, the State is mindful of your comments and those of Reilly's counsel on this subject. During our meeting on Monday, it was suggested that the Court postpone consideration of the MERLA amendments since, in Reilly's view, the State's MERLA claims relate only to Phase II issues.

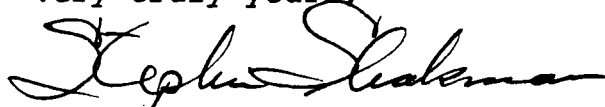
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We acknowledged that the amendment would not change the proof at the Phase I trial and asked for the opportunity to consider further whether hearing the amendment could be postponed subject to a "stand still" agreement, assuring that no prejudice would be suffered by the State on account of additional delay. We have reviewed the matter and, as explained below, cannot agree to a "stand still" agreement.

The State's proposed amendments would change its complaint in basically three ways, two relating to Phase II of the trial and one relating to Phase I. The Court must decide the Phase I issue (Reilly's liability under MERLA) before it can reach the Phase II issues (Reilly's damages for natural resources and obligation to pay response costs). In other words, Reilly must be found liable under MERLA before it can be required to pay damages and costs under that law. Since a determination on MERLA liability in Phase I is an essential precondition to the Phase II MERLA issues, we oppose delay in hearing this motion.

We have left blank the date, time and location of oral arguments on the motion pending further instruction from you. Questions regarding the motion can be directed to myself at 296-7216 or Lisa Tiegel at 296-7345. Depending upon Reilly's response and your wishes, we may agree to submit the motion without oral argument. Thank you again for your assistance in this matter.

Very truly yours,



STEPHEN SHAKMAN

Special Assistant Attorney General

Minnesota Pollution Control Agency
1935 W. County Road B-2
Roseville, MN 55113

cc: All counsel of record
Honorable Paul A. Magnuson